

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

AUDRY ANDERSON,

Petitioner,

v.

**CIVIL ACTION NO. 3:07-CV-65
(BAILEY)**

WILLIAM R. SHARPE, Jr., Hospital,

Respondent.

**ORDER DECLINING TO ADOPT REPORT AND RECOMMENDATION
AND ORDER OF REFERRAL**

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. By Standing Order entered on March 24, 2000, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Seibert filed his R & R on August 13, 2007 [Doc. 6]. In that filing, the magistrate judge recommended that this Court dismiss without prejudice the petitioner's habeas corpus petition [Doc. 1].

On May 30, 2007, the *pro se* petitioner, Audry Anderson, initiated this case by filing a barely legible handwritten petition which appears to seek habeas relief. A review of the file demonstrated that the petitioner had not paid the \$5.00 filing fee nor filed an Application to Proceed Without Prepayment of Fees. Therefore, on that same date, the Clerk sent the petitioner a Notice of Deficient Pleading with a warning that the failure to pay the filing fee or submit the required forms within 30 days could result in dismissal of this case without

prejudice.

On June 19, 2004, the petitioner filed a barely legible, handwritten letter which indicated to the magistrate judge that the Notice of Deficient Pleading might not have been received. Accordingly, an Order was entered on July 16, 2007, directing the Clerk of the Court to send the petitioner another Application to Proceed Without Prepayment of Fees and directing the petitioner to return the completed form within 20 days. The petitioner was advised that failure to do so would result in the dismissal of the petition without prejudice.

On August 13, 2007, magistrate judge Seibert filed his R & R. In that filing, the magistrate judge recommended that this Court dismiss without prejudice the petitioner's habeas corpus petition [Doc. 1]. At the time of his filing, the petitioner had not returned the completed application to proceed without prepayment of fees. The magistrate judge did, however, recommend that the petition should only be dismissed if the Court does not receive the requested documents from the petitioner.

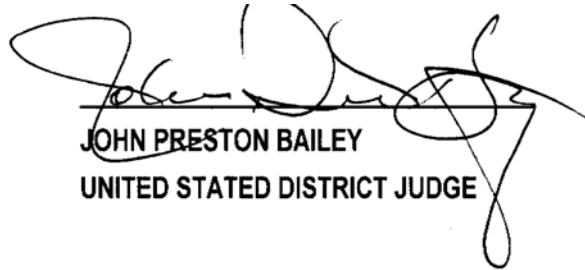
A review of the file shows that as of August 24, 2007, the petitioner has filed the required form to proceed without prepayment of fee [Doc. 8].

Therefore, upon careful review of the R & R, this Court **DECLINES to ADOPT** the **Magistrate Judge's Report and Recommendation** [Doc. 6]. Accordingly, pursuant to Standing Order No. 5 and for reasons appearing to the Court, it is further **ORDERED** that this action be, and hereby is, referred to the Honorable James E. Seibert, United States Magistrate Judge, who is hereby designated and authorized to consider the record and do all things proper to decide the petitioner's Motion for Leave to Proceed in forma pauperis and Petition for Writ of Habeas Corpus [Docs. 8 and 1] and any other motions.

It is so **ORDERED**.

The Clerk is directed to mail true copies of this Order to all counsel of record and the *pro se* petitioner.

DATED: October 17, 2007.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE